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ARTHUR FREILICH
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In re Application of : **OFFICE OF PETITIONS**
Alfred E. Mann et al :
Application No. 10/702,565 : DECISION ON PETITIONS
Filed: November 5, 2003 : UNDER 37 CFR 1.78(a)(3) AND (a)(6)
Atty Dkt No. AB-357P;MB-103; 203/526 :

This is a decision on the petition, filed May 2, 2006, which is being treated as a petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), to accept an unintentionally delayed claim under 35 U.S.C. §§120 and 119(e) for the benefit of priority to the prior-filed applications set forth in the concurrently filed amendment.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). In addition, the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) must be accompanied by:

- (1) the reference required by 35 U.S.C. §§ 120 and 119(e) and 37 CFR §§ 1.78(a)(2)(i) and 1.78(a)(5)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The petition fails to satisfy item (1) above. In this regard, the amendment, as worded, is improper since it states that “the present application claims the benefit of U.S. Provisional Applications 60/424,912 filed 11/08/2002, 60/327,099 filed 10/03/01 and 60/327,071 filed 10/03/2001.” While the present application can directly claim benefit to provisional Application No. 60/424,912, since it was filed within 12 months of the filing date thereof, it cannot directly claim benefit to provisional Application Nos. 60/327,099 and 60/327,071, as the present application was not filed within 12 months of the filing dates of these latter provisional

applications. However, a claim for benefit of priority may be claimed through intermediate Application No. 10/264,937 as this application was filed within twelve months of provisional Application Nos. 60/327,099 and 60/317,071.

Before the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) can be granted, a renewed petition and either an Application Data Sheet or a proper amendment (complying with the provisions of 37 CFR 1.121 and 37 CFR 1.76(b)(5)) to correct the above matters are required.

Further correspondence with respect to this matter should be addressed as follows:

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 ATTN: Office of Petitions

Inquiries concerning this decision may be directed to the undersigned at (571) 272-3218.


Frances Hicks

Petitions Examiner
Office of Petitions